

screening code is transmitted, by contrast, the IXC must check some reliable data base in order to confirm whether the call is from a payphone and therefore, compensable under the Payphone Order. APCC's experience with the data base currently used to administer flat-rate compensation is that the data base information is frequently unreliable and imposes substantial delays and costs in collecting compensation. Frequently, compensation for a given period is never collected on certain payphones because of the difficulties of securing LEC verification. Transmitting a unique screening code for COCOT lines as well as coin lines evidently would make it unnecessary for PSPs to have their collection of compensation continually delayed or denied due to the highly error-prone LEC verification data base currently in use.

Therefore, by transmitting a unique code on all coin lines while transmitting a non-unique code on COCOT lines, NYNEX's discriminating heavily in favor of its payphone division, providing it with a great advantage in the collection of per-call compensation from IXCs.

Accordingly, the Commission should order NYNEX to clarify that it will provide PSPs using COCOT lines with a screening code that uniquely identifies their lines as payphone lines. Unless IXCs are required to subscribe to codes similar to Ameritech's Flex ANI code in all areas, NYNEX must be required to reconfigure the existing codes, which are universally available as part of the access services to which IXCs *do* subscribe, so that a unique code is available for COCOT lines as well as coin lines.

IV. OPERATOR SERVICES

NYNEX's CEI plan does not address the intraLATA operator services offered with its public payphones. NYNEX should be required to specify whether it considers operator services to be part of its deregulated payphone service or whether it considers operator services to be a separable service that is not "ancillary" to its public payphone service.

If operator services are part of NYNEX's deregulated public payphone service, NYNEX should explain whether it is providing such services (1) in the payphone or (2) by reselling network-based operator functions. Further, NYNEX should be required to identify the network functions supporting such services and to indicate how those same functions will be offered to PSPs on a nondiscriminatory basis.

If operator services are a separable regulated service that is not "ancillary" to NYNEX's deregulated payphone service, NYNEX still must demonstrate that it is not subsidizing its payphone operations or discriminating between its payphone operations and other PSPs in the provision of such services. For example, if NYNEX is offering a commission to its payphone operations for presubscribing its payphones to NYNEX's operator service, then at a minimum, such commissions must also be available to independent PSPs on the same terms and conditions.¹⁴ At a minimum, NYNEX must

¹⁴ However, since NYNEX is not using an affiliate for its provision of payphone service, it is questionable whether the Commission's accounting rules allow NYNEX to pay itself a commission for presubscribing its payphones to NYNEX's operator services. Such a transfer of regulated revenues out of regulation may be permissible under the Commission's affiliate transactions rules. However, there is no express permission for such treatment under the cost allocation rules governing nonregulated operations that are not provided through a separate affiliate.

submit a copy of its presubscription contract with its payphone operations and to state that it will offer the same terms and conditions to other IPP providers.

V. CPNI AND SEMI-PUBLIC SERVICE CUSTOMERS

Regarding customer proprietary network information ("CPNI"), NYNEX indicates that it will follow existing procedures except where inconsistent with the requirements of Section 222 of the Act and pending the outcome of the FCC's CPNI proceeding. Plan at 10. This approach leaves several questions unanswered regarding how it is applied to protect, under nondiscriminatory conditions, the CPNI of PSPs, as well as the CPNI of NYNEX's existing "semi-public" customers.

NYNEX does not explain to what extent it has modified its procedures to ensure equal -- and equally protected -- access by all payphone service providers ("PSPs") to the customer-proprietary network information ("CPNI") of current customers of tariffed semi-public service. For example, NYNEX states that it will treat CPNI regarding PSPs and their subscribed services as restricted CPNI that will not be made available to or accessible by any other payphone service provider, "absent consent." NYNEX does not indicate to what extent it has modified the security procedures described in its plan to ensure that its payphone service personnel, who may have direct access to NYNEX's automated service order system (see discussion of service ordering, above) will not also have access to CPNI of PSPs.

NYNEX's CPNI plan also leaves ambiguous the manner in which it will handle information relating to current customers of NYNEX's tariffed semi-public payphone

service. With semi-public service, the payphone location provider subscribes to, and is billed for, a tariffed NYNEX service in which NYNEX provides a payphone and charges the location provider for the line and usage of the payphone. Thus, the location provider is a true customer of NYNEX's tariffed services. The status of semi-public service and its subscribers is scheduled to change on April 15, 1997, because NYNEX may no longer provide the semi-public payphone and the associated payphone-calling services as part of its regulated exchange service operations.

Thus, the CPNI associated with semi-public services is clearly CPNI of the location provider customer and may not be used or disclosed by NYNEX without the customer's affirmative consent except in the provision of the telecommunications service from which the information is derived. 47 U.S.C. § 222(c)(1). Since the existing tariffed semi-public service is necessarily being terminated, subsequent to the termination NYNEX's payphone operation has no more right than any other PSP to access and use the semi-public customer's CPNI.

NYNEX's treatment of semi-public CPNI has major policy implications. The "flash-cut" deregulation of semi-public service will open up a marketplace opportunity for a large group of customers who are willing to pay to have a payphone located on their premises. Customers of tariffed semi-public service are likely to have little or no awareness of the imminent termination of their tariffed service. Since these customers were obtained by NYNEX under anticompetitive, discriminatory conditions in an era of LEC payphone subsidies, there is no legitimate reason why NYNEX's payphone operation should be

allowed to exploit its telephone company status to gain preferred access to these customers at the expense of competitors.

Customers of semi-public service should be provided full notice, in a neutral fashion, of the changes that are occurring and be offered a meaningful opportunity to make changes in their payphone services without being subject to service change or installation charges. NYNEX should be required to disclose how it will notify semi-public customers, in a neutral fashion, of the imminent changes and how it will provide those customers an opportunity to authorize disclosure of CPNI on a nondiscriminatory basis to interested payphone providers, including without preference NYNEX's payphone division.

To the extent that NYNEX has, subsequent to enactment of Section 222, allowed its payphone operations to access semi-public customers' CPNI for purposes of marketing nonregulated payphone service to existing semi-public customers, NYNEX has been in violation of the Act. NYNEX should be required to disclose whether such access has occurred. If it has occurred, the Commission must take appropriate remedial measures, including a "fresh look" for any customer that was signed to a contract in violation of Section 222.

VI. OTHER SEMI-PUBLIC SERVICE ISSUES

There are other questions related to semi-public and semi-public-like service that are not addressed at all in NYNEX's CEI plan. For example, to the extent that NYNEX's payphone operation intends to continue offering a semi-public-like payphone service that involves charging location providers for lines and usage on their payphones, NYNEX must

disclose how such a service will be supported by NYNEX's network operations and how charges for the service will be treated on the subscriber's bill. For example, if NYNEX makes network functions available to its payphone operation to track the usage of "semi-public-like" service lines, it must make those same tracking services available in the same manner to independent PSPs. If NYNEX allows its payphone operations to bill for "semi-public-like" service in the local exchange portion of the subscriber's bill, it must make the same billing treatment available for independent PSPs.¹⁵

¹⁵ To the extent that such billing treatment is tariffed or subject to regulation at the state level, it is clearly a service that the Bell companies must provide on a nondiscriminatory basis, even if other nonregulated billing services are not.

CONCLUSION

NYNEX's CEI plan fails to provide sufficient specificity and contains outright violations of CEI requirements and the Payphone Order as detailed above. Therefore, NYNEX's CEI plan must be rejected. NYNEX must be required to refile or amend its plan in accordance with the foregoing comments. The Commission should require the refiled plan to be served on commenting parties and to be subject to the same comment period, so that parties have an adequate opportunity to review and comment on the new material submitted.

Dated: February 7, 1997

Respectfully submitted,



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Certificate of Service

I hereby certify that on February 12, 1997, a copy of the foregoing Errata to the Comments of the American Public Communications Council on NYNEX Telephone Companies' CEI Plan was sent by overnight courier for delivery on February 13, 1997 to:

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